

Letter of Findings: 02-20130217P
Corporate Income Tax
For Tax Periods 2009 to 2011

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department exercise its discretion to abate penalties for failure to file corporate schedules.

STATEMENT OF FACTS

Taxpayer is an S Corporation doing business in Indiana. The Indiana Department of Revenue ("Department") conducted a corporate income, withholding, and sales and use tax audit of Taxpayer (this Letter of Findings only deals with the corporate income tax audit). For the corporate income tax audit, the tax periods 2009 through 2011. During the periods in review, the Department determined that Taxpayer had not filed the IT-20S Comp, and there were no composite tax return payments included with this tax return. Based upon the corporate income tax audit, the Department issued a proposed assessment for corporate income tax, penalty, and interest. Taxpayer protests the imposition of penalty, and this Letter of Findings results.

I. Tax Administration–Negligence Penalties.

DISCUSSION

The Department assessed Taxpayer penalty because Taxpayer failed to timely file its 2009, 2010, and 2011 Form IT-20S by the due date. Taxpayer protests the imposition of the penalties assessed pursuant to the Department's corporate income tax audit. Taxpayer claimed that if he had been informed in 2007 that he was required to withhold any payments for corporate withholding, he would have been paying it every year.

IC § 6-8.1-10-2.1(j) provides:

If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by [IC 6-3-4-12\(h\)](#) or [IC 6-3-4-13\(j\)](#), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation.

IC § 6-8.1-10-2.1(d) & (f) also provides:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

...

(f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer has not provided sufficient information to establish that its failure to file the Form IT-20S in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#). Consequently, they have not met their burden for waiver of the late payment penalty.

FINDING

Taxpayer's protest of the imposition of the penalties is respectfully denied.

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